



UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
097170,189	10/13/98	HERBAUT	0 1418-40

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PM92/0119

EXAMINER

FLEMING, F

ART UNIT	PAPER NUMBER
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3618

5.

DATE MAILED: 01/19/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary	Application No.	Applicant(s)	
	09/170,189	HERBAUT, OLIVIER	
	Examiner	Art Unit	
	Faye Fleming	3618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- 1) ☒ Responsive to communication(s) filed on 13 October 1998.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some * c) ☒ None of the CERTIFIED copies of the priority documents have been:
1. ☒ received.
2. ☐ received in Application No. (Series Code / Serial Number) _____.
3. ☐ received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. & 119(e).

Attachment(s)

- | | |
|--|--|
| 14) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 17) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 15) <input checked="" type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 18) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 16) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 19) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Priority

1. Acknowledgment is made of applicant's claim for foreign priority based on an application filed in France on October 20, 1997. It is noted, however, that applicant has not filed a certified copy of the priority application as required by 35 U.S.C. 119(b).

Specification

2. The use of the trademark VELCO has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims are replete with functional and indefinite

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language, failing to distinctly claim that which applicant regards as his invention. For an example:

A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claim 1 recites the broad recitation of a retaining device, and the claim also recites in particular a lateral one which is the narrower statement of the range/limitation.

The terms "constituted by" and "at least" are contradictory. Correction is required.

Claim 5 contains the trademark/trade name VELCO. Where a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35 U.S.C. 112, second

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paragraph. See *Ex parte Simpson*, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular material or product. A trademark or trade name is used to identify a source of goods, and not the goods themselves. Thus, a trademark or trade name does not identify or describe the goods associated with the trademark or trade name. In the present case, the trademark/trade name is used to identify/describe a hook and loop and, accordingly, the identification/description is indefinite.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1, 2, 4, 6, 7 and 9 rejected under 35 U.S.C. 102(b) as being anticipated by Hagen, et al ('562). Hagen, et al discloses an inflatable vehicle occupant protection device comprising a body (10), means for retaining the body (100), and means for fixing the body (170). The fixing means are located at the edges of the body. The body Hagen, et al discloses includes a cover (60), an embellishment sheet (62), and layer allowing the fixing means to be attached to the body (64), and a layer permitting the shaping and the safe maintaining of the cover (66), see Figure 1. Figure 3 illustrates two elements (176, 100) capable of being integral with and of being detached from. The

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device also includes a bodywork element (20) and a housing (42). A distance piece (90) rest on the housing at one end (96) and co-operates partially with the fixing means at the opposite end (92).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1, 3, 5, 7, 8 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hagen, et al ('562) in view of Lee ('126). Hagen, et al is discussed above and lacks teaching a hinge and a formed zone. Lee teaches an air bag module having a bodywork element (16) including a housing (26) and a cover (24). Lee's air bag module includes a hinge (180), where a thin portion is capable of being permanently fixed directly or indirectly, as shown in Figure 1. Illustrated in Figures 1 and 6, Lee also teaches a formed zone. Based on the teachings of Lee, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device of Hagen, et al to include a hinge and a formed zone to provide an easier release mechanism for the cover of the air bag device. Regarding claim 3, Hagen, et al discloses the claim invention except for thermoformable synthetic cellular material. It would have been obvious to one having ordinary skill in the art at the time

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the invention was made to have thermoformable synthetic cellular material to provide shape, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. Regarding claim 5, the use of a hook and loop type fastener for a fixing means would have been obvious to one having ordinary skill in the art to provide an easier means for the cover to be removed.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Gray, et al and Nagy, et al references each disclose some features in common with the present invention.

10. The Group and/or Art Unit location of your application in the PTO has changed. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Group Art Unit 3618.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Faye Fleming whose telephone number is (703) 305-0209. The examiner can normally be reached on M-F (9:00-5:00) First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Johnson can be reached on (703) 308-0885. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-2571 for regular communications and (703) 308-2571 for After Final communications.


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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

Faye Fleming
Examiner
Art Unit 3618



fmf
January 13, 2000



BRIAN L. JOHNSON
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600

1/14/00